& P. R. Co. v. *Barrett,* 23 Tex. Civ. App. 545, 57 S. W. 602; *Jackson* v. *Kansas City, Ft. S. & M. R. Co.,* 157 Mo. 621, 58 S. W. 32, 80 Am. St. Rep. 650; *L. & N. R. Co.* v. *Daniel,* 122 Ky. 256, 91 S. W. 691. The theory of these cases is that the acquiescence of the railway company makes plaintiff a licensee. The principal case holds that by posting notices the company shows that it does not acquiesce in the use of the highway by the public, so that each use is a trespass, and continued trespasses can never raise an implied license. *Winnie* v. *Lake Shore & M. S. Ry. Co.,* 160 Mich. 334, 125 N. W. 351; *Toomey* v. *Southern etc. R. Co.,* 86 Cal. 374, 10 L. R. A. 139; *Hamlin* v. *Col. etc. R. Co.,* 37 Wash. 448, 79 Pac. 991. Contra, holding that merely posting notices does not relieve company of duty to exercise care where they know public are accustomed to use tracks. *Missouri etc. Ry. Co.* v. *Sharp* (Texas Civ. App. 1909), 120 S. W. 263; *Gulf etc. Ry. Co.* v. *Cohen* (Texas Civ. App. 1910), 126 S. W. 916. Other authorities hold that a railway company rests under the obligation to use reasonable care to prevent injury to persons on the track at places where they have reason to anticipate the presence of persons thereon. *Southern R. Co.* v. *Smith,* 163 Ala. 174; *Anderson* v. *Great Nor. R. Co.,* 15 Idaho 513, 99 Pac. 91; *Louisville etc. R. Co.* v. *Miller,* 134 Ky. 716, 121 S. W. 648; *Eggstein* v. *Mo. Pac. R. Co.,* 197 Mo. 720, 94 S. W. 967. A case in the same jurisdiction as the principal case (*Huggett* v. *Erb,* 182 Mich. 524, 148 N. W. 805), decided in 1914 and involving similar facts, after holding the plaintiff to be a trespasser says, "The question of the extent to which defendant's track was traveled at the place of the accident, defendant's knowledge of such use, the degree of care required in managing trains in that locality * * * should have been submitted to the jury." This case, it is true, was in regard to a child but the reasoning would apply to adults as well and it would seem that under the circumstances of the principal case the rule in *Huggett* v. *Erb,* supra, would have been the better one to apply. See also 11 MICH. L. REV. 84.

SALES—BARTER AND EXCHANGE OR SALE.—Plaintiff agreed in writing to convey certain land to defendant for a consideration of $9,600, agreeing to take in payment therefor a specific stock of merchandise and fixtures. The agreement further provided that "Should the stock and fixtures not amount to the $9,600.00 the party of the first part hereby agrees to take groceries in amount to make up the $9,600.00; said groceries now located in" a building in W., and to be taken at their invoiced wholesale value. The stock and groceries not in fact amounting to $9,600.00, on suit brought to recover the difference, the vendee claimed the right to make it up with other groceries or their actual value in money, alleging that their actual money value would be less than their invoiced value. *Held,* the transaction was a sale, not a barter and exchange, and therefore the defendant must make up the difference in cash, instead of substituting another stock of groceries or their actual, as distinct from their invoiced, value. *Brunsvold* v. *Medgorden* (Iowa 1915), 153 N. W. 163.

A first glimpse this case appears to be an addition to those very few which involve a distinction between sales and exchanges, and it has been so treated

in at least one law review. In reality, however, its contribution to that subject is mere dictum at most. The decision did not turn upon the technical nomination of the transaction; the name of the transaction depended upon the decision, and was irrelevant to the issue. The amount of damages depended only upon the finding as to what had been the defendant's undertaking,—to deliver to the plaintiff merely the specific goods mentioned, which he had done, or to pay him the consideration of $9,600.00 in those goods so far as they should suffice and the rest in money. The court's confusion of expression appears to be due to the difficulty of reaching either of these findings from the facts as they appear, instead of recognizing that there had been a mistake of fact in the agreement, namely, in supposing that the groceries at W. were more than sufficient to cover the amount necessary.

TORTS—PROXIMATE CAUSE.—Where a prairie fire is negligently caused by a railway company, and the wife of a homesteader who is left at home alone with her young daughter uses every reasonable effort to put out such fire, and in doing so overworks and strains herself so that permanent injuries ensue, *held*, that she can recover damages from such company therefor, provided that she did not unreasonably and recklessly expose herself to such injury. *Wilson* v. *Northern Pac. Ry. Co.* (N. Dak. 1915) 153 N. W. 429.

In an earlier case, and one which is generally cited as expressing the true doctrine, the court said: "That one, who, acting with reasonable prudence, voluntarily exposes himself to danger for the purpose of protecting his property may recover for consequent injuries he receives from the person whose wrong caused the injury to himself and damage to the property he sought to protect." *Liming* v. *R. R. Co.*, 81 Ia. 250; *Page* v. *Bucksport*, 64 Me. 51, 18 Am. Rep. 239; *Ingalls* v. *Bills*, 9 Met. (Mass.) 1; *T. P. & W. R. R. Co.* v. *Pindar*, 53 Ill. 447; *Harris* v. *Township of Clinton*, 64 Mich. 447; *Berg* v. *Great Northern Ry. Co.*, 70 Minn. 272. The case of *Seale* v. *Gulf, C. & S. F. Ry. Co.*, 65 Tex. 274, 57 Am. Rep. 602, takes a contrary view, the court holding "that whether the deceased was negligent or not in her attempt to put out the fire, that attempt, and not the original negligence of the defendant in starting the fire, was the proximate cause of her death and that the company should be held to have contemplated that the life of anyone attempting in a careful manner to extinguish the flames would be sacrificed would be unreasonable." The case of *Logan* v. *Wabash Ry. Co.*, 96 Mo. App. 461, decided that while it was the plaintiff's duty to use every reasonable effort to extinguish the fire and prevent the loss, it did not necessarily follow that if, in so doing, he was injured, the defendant became liable. Accord, *Chattanooga Light & Power Co.* v. *Hodges*, 109 Tenn. 331, 60 L. R. A. 459; *Henry* v. *C. C. C. & St. L. Ry. Co.*, 67 Fed. 426; *Cook* v. *Johnston*, 58 Mich. 437, 55 Am. Rep. 703. The cases which sustain the defendant's view in the case of *Seale* v. *Gulf, C. & S. F. Ry. Co.*, supra, are wrong in principle and opposed to the weight of authority. The court is wrong in holding that the proximate cause of the injury was not the original negligence of defendant in starting the fire, but was the attempt of the plaintiff to put it out. It was wholly due to the negligence of defendant that plaintiff's property was exposed to danger and